

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

DAVID HERBERT,

Plaintiff,

CASE NO. 07-CV-13284

v.

DISTRICT JUDGE GERALD E. ROSEN  
MAGISTRATE JUDGE CHARLES E. BINDER

UNITED STATES DEPARTMENT  
OF EDUCATION, SAINT MARY OF  
THE PLAIN COLLEGE, JOHN DOE,  
and JANE DOE,

Defendants.

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**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
ON PLAINTIFF'S MOTION FOR JUDGMENT AND FOR SETTLEMENT**

(Dkt. 9)

**I. RECOMMENDATION**

**IT IS RECOMMENDED** that the motion be **DENIED WITHOUT PREJUDICE**.

**II. REPORT**

**A. Procedural Background**

The *pro se* Plaintiff filed the instant action on August 7, 2007. (Dkt. 1.) All pretrial matters were referred to the undersigned Magistrate Judge on August 31, 2007. (Dkt. 4.) The Plaintiff was granted *in forma pauperis* (“*ifp*”) status and the Marshal was directed to serve the complaint on September 12, 2007. (Dkt. 3, 5.) As of the date of this Report, only one Defendant, United States Department of Education, has been served with the summons and complaint. (Dkt. 6.)

## **B. Discussion**

Plaintiff's motion for judgment or settlement seeks \$20,000,000 from each Defendant named based on their alleged "deliberate intent to extort and embezzle finances through identity theft...[and their] preknowledge [sic] that this Plaintiff was not the recipient of a \$2,500 student loan." (Dkt. 9 at 1.) The motion seeks substantive relief and is construed as one for summary judgment. Since the Defendants have not all been served and even the one that has been served still has time in which to answer the complaint, I suggest that Plaintiff's motion is premature and inappropriately raised at this time. *Harold Wayne Centers v. Brenda Lee Centers*, No. 1:04-CV-130, 2004 WL 3079289, \*3 (E.D. Tenn. Nov. 16, 2004) ("The plaintiff's motion for summary judgment is DENIED...[as] extremely premature...because the plaintiff has not effectuated service of process upon these two defendants pursuant to Rule 4...").

Accordingly, I recommend that the motion be denied without prejudice to Plaintiff's ability to raise dispositive motions at the appropriate time under the Court's scheduling order once it is issued. *Wright v. Moise*, \_\_\_ F. Supp. 2d \_\_\_, No. 3:06-CV-P572-S, 2007 WL 2669373, \*7 (W.D. Ky. Sept. 7, 2007) (declining to consider summary judgment motion "because the defendants have not yet been served...[and stating that the] scheduling order entered this date addresses the appropriate time for filing a dispositive motion").

## **III. REVIEW**

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1)(C). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v.*

*Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E Binder

CHARLES E. BINDER  
United States Magistrate Judge

Dated: October 4, 2007

#### **CERTIFICATION**

I hereby certify that this Report and Recommendation was electronically filed this date, served on David Herbert by first class mail, and served on District Judge Rosen in the traditional manner.

Date: October 4, 2007

By s/Jean L. Broucek  
Case Manager to Magistrate Judge Binder